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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee for Fremont Home
Loan Trust Series 2006-3,

Plaintiff,

vs.

LV REAL ESTATE STRATEGIC
INVESTMENT GROUP LLC, a Nevada
limited-liability company; LV REAL
ESTATE STRATEGIC INVESTMENT
GROUP LLC SERIES 9128, a Nevada
limited-liability company; TERRA WEST
COLLECTIONS GROUP LLC d/b/a
ASSESSMENT MANAGEMENT
SERVICES, a Nevada limited liability
company; and TAPESTRY AT TOWN
CENTER HOMEOWNERS ASSOCIATION,
a Nevada nonprofit corporation;

Defendants.

Case No. 2:17-cv-00605-RFB-CWH

**STIPULATION AND ORDER TO
STAY LITIGATION PENDING FINAL
RESOLUTION OF PETITIONS FOR
WRIT OF CERTIORARI TO UNITED
STATES SUPREME COURT**

STIPULATION

It is hereby stipulated by and between Plaintiff DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee for Fremont Home Loan Trust Series 2006-3, ("Plaintiff"), and

Defendants LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC, a Nevada limited-liability company, LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES 9128, a Nevada limited-liability company; TERRA WEST COLLECTIONS GROUP LLC d/b/a ASSESSMENT MANAGEMENT SERVICES, a Nevada limited liability company, and TAPESTRY AT TOWN CENTER HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation, (collectively, the “Parties”), by and through their counsel, as follows:

1. This lawsuit involves a claim for quiet title/declaratory relief and other claims related to a non-judicial homeowner’s association foreclosure sale conducted on a property pursuant to NRS Chapter 116.

2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159-60 (9th Cir. 2016) holding that NRS Chapter 116 is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14, 2016, vacating and remanding the District Court’s judgment.

3. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*, 133 Nev. Adv. Op. 5, ___ P.3d ___, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct contrast to *Bourne Valley*, that no state action supported a challenge under the Due Process Clause of the United States Constitution.

4. The *Saticoy Bay* decision by the Nevada Supreme Court conflicts directly with Ninth Circuit’s ruling in *Bourne Valley*, making the issue appropriate for consideration by the United States Supreme Court. *See* Sup. Ct. Rule 10(a) & (b) (noting that the High Court will consider review when “a United States court of appeals has . . . decided an important federal question in a way that conflicts with a decision by a state court of last resort * * * [or] a state court of last resort has decided an important federal question in a way that conflicts with the decision of . . . a United States court of appeals.”)

5. Since then, several judges in this district have stayed similar cases pending the

1 exhaustion of the appeal of the Ninth Circuit’s decision in *Bourne Valley* pending before the
2 United States Supreme Court. *E.g.*, *Nationstar Mtg. LLC v. Green Valley S. Owners Assoc.*, No.
3 2:16-cv-00883-GMN-GWF; *Bank of America, N.A. v. Canyon Willow Trop Owners' Assoc.*, No.
4 2:16-cv-01327-GMN-VCF (D. Nev. Oct. 26, 2016); *Deutsche Bank Nat'l Trust Co. v. Copper*
5 *Sands HOA*, No. 2:16-cv-00763-JAD-CWH (D. Nev. Feb. 28, 2017).

6 6. Terra West/AMS filed a Motion to Dismiss Complaint (“Motion to Dismiss,” ECF
7 No. 22) on May 19, 2017.

8 7. The Parties believe the conflict should be resolved. Counsel in *Bourne Valley* has
9 sought review of the state action issue in the United States Supreme Court. *Bourne Valley*’s
10 petition for writ of certiorari of the Ninth Circuit’s *Bourne Valley* decision is pending in the
11 United States Supreme Court. *See Bourne Valley Court Trust v. Wells Fargo Bank, NA.*, United
12 States Supreme Court Case No. 16A753. Thus, the parties believe that a continued litigation stay
13 is appropriate and will not be indefinite.

14 8. To determine if a continued stay is appropriate, the Court considers (1) damage
15 from the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the
16 orderly course of justice. *Maheu v. Eighth Judicial Dist. Court In & For Clark County, Dept. No.*
17 *6*, 88 Nev. 26, 51, 493 P.2d 709, 725 (1972), quoting *Landis v. North American Co.*, 299 U.S.
18 248, 254-55 (1936). Here, the factors support a continued stay of litigation.

19 a. Damage from Stay: Any damage from a temporary stay in this case will be
20 minimal if balanced against the potential fees, costs, and time which would surely ensue in
21 this matter if litigation were allowed to continue that could be mooted by a decision in *Bourne*
22 *Valley* certiorari proceedings. Indeed, the parties will be enabled to avoid the cost and
23 expense of continued legal proceedings in light of what is unsettled law to say the least.
24 Moreover, the Court will be relieved of expending further time and effort until the conflict
25 between the circuit and Nevada Supreme Court is resolved. Thus, a stay will benefit all
26 parties involved herein as well as the Court.

27 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls
28 one party more than the other. This relatively equal balance of equities results from the need

1 for the parties to have finality, given the split in the state and federal court decisions. Any
2 hardship would be equal in terms of resources expended without a stay. A stay prevents this
3 expenditure for all Parties and the parties agree that any hardship or inequity falling on any of
4 them is outweighed by the benefits of a stay.

5 c. Orderly Course of Justice: At the center of this case is an association foreclosure
6 sale under NRS Chapter 116. The outcome of the petition for writ in *Bourne Valley* has the
7 potential to moot this litigation. Without a stay, the Parties will expend resources that will be
8 unnecessary if the petition is denied. A stay would also avoid a likely appeal from any
9 subsequent judgment in this case. A temporary stay would substantially promote the orderly
10 course of justice in this case. A stay will avoid the moving forward without final resolution of
11 the federal issues and the state court / federal court conflict.

12 9. The Parties agree that all proceedings in the instant case are stayed pending final
13 resolution of the *Bourne Valley* certiorari proceedings before the United States Supreme Court.
14 The Parties agree that the pending Motion to Dismiss is withdrawn, **without prejudice**.

15 10. The Parties further agree that their claims and defenses will be tolled, if necessary,
16 for the duration of the stay, beginning on the date this stipulation is filed until the Court issues an
17 order lifting the stay.

18 11. LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES 9128
19 shall be required to keep current on all property taxes and assessments, HOA dues, and to
20 reasonably maintain the property at issue, and shall also be required to provide proof of payment
21 upon reasonable notice to counsel for Plaintiff.

22 12. LV REAL ESTATE STRATEGIC INVESTMENT GROUP LLC SERIES 9128
23 shall be prohibited from selling or encumbering the property unless otherwise ordered by the
24 Court.

25 13. Plaintiff is prohibited from conducting a foreclosure sale on the property unless
26 otherwise ordered by the Court.

27 14. Any party may file a written motion to lift stay at any time, and any party may file
28 an opposition to the motion within fourteen (14) calendar days after the written motion is filed

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with the Court.

IT IS SO STIPULATED.

(Signatures and Order for Stipulation and Order to Stay Litigation on next page)

Dated June 14, 2017

Snell & Wilmer L.L.P.

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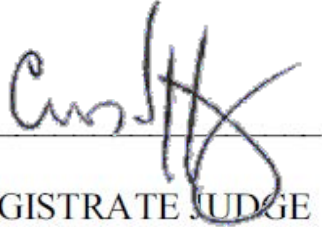
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IT IS SO ORDERED.

DATED: June 15, 2017


C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE

4828-0576-5450.1